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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,859	06/05/2006	Shigeto Kajiwara	127991	4641
25944 7590 09/29/2010 OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850				
EXAMINER				
CULLEN, SEAN P				
ART UNIT		PAPER NUMBER		
1795				
NOTIFICATION DATE		DELIVERY MODE		
09/29/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/581,859

Applicant(s)

KAJIWARA, SHIGETO

Examiner

Sean P. Cullen

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
b) ☐ They raise the issue of new matter (see NOTE below);
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 15-32.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Robert Hodge/
Primary Examiner, Art Unit 1795

Continuation of 3. NOTE: The applicant's have amended the claims to recite "a/the control portion is programmed to" from "a control portion which" in claims 15-30. The applicant's have changed the scope of the claims, which requires further consideration. Therefore, the amendments raise new issues that would require further search and/or consideration..

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding applicant's amendment, the amendments would give the control portion limitations patentable weight. However, the control portion limitations recited in the previously presented claims were not given patentable weight as stated in the office action. Therefore, the amendments require further consideration.

Regarding applicant's argument that the combination of references fails to disclose or suggest a control portion that is programmed to change the amount of electric power consumed by the load portion to increase consumption to remove imbalance between charge and discharge of the electric power storage device in the system by reducing the difference between the supply electric power set value indicating an amount of electric power which needs to be supplied from the electric power storage device and the actual supply electric power value indicating an amount of electric power which is actually supplied from the electric power storage device, it is noted that the features upon which applicant relies (i.e., change the amount of electric power consumed by the load portion to increase consumption) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Amended claim 15 recites "change the amount of electric power consumed by the load portion to increase or decrease consumption" (emphasis added).

Regarding applicant's argument that Hauer only discusses increasing/decreasing the output of the fuel cell in order to maintain the charge of the energy reservoir within a range, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Nonobe et al. discloses wherein the control portion (50) changes the amount of electric power consumed by the load portion (32 and 34, C11/L56-C12/L7) to decrease the consumption to remove imbalance between charge and discharge (Fig. 6) of the electric power storage device (30) in the system by reducing the difference between the supply electric power set value indicating an amount of electric power which needs to be supplied from the electric power storage device (IB1, C10/L61-C11/L18) and the actual supply electric power value indicating an amount of electric power which is actually supplied from the electric power storage device (I, C12/L23-46). Nonobe et al. discloses that the controller (50) reduces the electric power consumed by the drive motor (32) to balance the charge and discharge (see I-0, Fig. 6). Nonobe et al. also discloses that an increase in the power consumed by the load increases the amount of power supplied by the battery (see IB1 and IB2, Fig. 4). Hauer discloses that overcharging of the energy reservoir (3) may impair its function (C2/L59-60) and this state of overcharge should be resolved by allowing the energy reservoir to supply more power to the load. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention that the state of overcharge, which Hauer discloses as detrimental to the energy reservoir and resolves by allowing the energy reservoir to supply more power to the load, would also be resolved by increasing the power consumed by the load, which also increase the amount of power supplied by the battery.

Regarding applicant's argument that Hauer does not discuss changing the drive control or the motor when the output of the fuel cell is changed or changing the amount of electric power consumed by the load portion, Nonobe et al. discloses changing the amount of electric power consumed by the load portion (C11/L56-C12/L7).

Regarding applicant's argument that Hauer also fails to discuss the supply electric power set value and the actual supply electric power value, Nonobe et al. discloses a supply electric power set value (IB, Figs. 4, 5, 13 and 14) and the actual supply electric power value (I, Figs. 6, 11 and 14).

Regarding applicant's argument that Hauer fails to disclose or suggest changing the amount of electric power consumed by the load portion to increase consumption to remove imbalance between the charge and discharge of the electric power storage device in the system by reducing the difference between the supply electric power set value and the actual supply electric power value, it is noted that the features upon which applicant relies (i.e., changing the amount of electric power consumed by the load portion to increase consumption) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Amended claim 15 recites "change the amount of electric power consumed by the load portion to increase or decrease consumption" (emphasis added).

Regarding applicant's argument that the combination of Nonobe, Hauer and Ohkubo is missing a feature and that feature would not otherwise have been obvious, Nonobe and Hauer are not deficient as detailed above.

Regarding applicant's argument that Hauer fails to provide any discussion about changing the amount of electric power consumed by the drive control or motor, Nonobe et al. discloses changing the amount of electric power consumed by the drive motor as detailed above.

Regarding applicant's argument that Hauer does not disclose or suggest automatically changing the amount of electric power consumed by the drive control and the motor when the fuel cell is shut down, Nonobe et al. discloses automatically changing the amount of electric power consumed by the drive motor as detailed above.

Regarding applicant's argument that Hauer fails to suggest changing the amount of electric power consumed by the load portion to increase consumption to remove imbalance between charge and discharge of the electric power storage device in the system by reducing the difference between the supply electric power set value and the actual supply electric power value, it is noted that the features upon which applicant relies (i.e., changing the amount of electric power consumed by the load portion to increase consumption) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Amended claim 15 recites "change the amount of electric power consumed by the load portion to increase or decrease consumption" (emphasis added)..